STATE OF MICHIGAN

COURT OF APPEALS

PAINTERS SUPPLY & EQUIPMENT CO.,

Plaintiff-Appellee,

v

GARRET W. FORBIS,

Defendant-Appellant.

UNPUBLISHED
February 4, 2000

No. 216553
St. Clair Circuit Court
LC No. 98-000039-CZ

Before: O'Connell, P.J., and Meter and T. G. Hicks*, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order granting plaintiff's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant owned and operated National Coach Engineering, Inc. (NCE), a manufacturing company. He signed a promissory note to plaintiff, a supplier of painting materials. Defendant signed the note both on behalf of the corporation and individually, as guarantor of NCE's debt.

NCE entered bankruptcy, and plaintiff sued defendant as an individual, based on the guarantee. Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that no genuine issue of fact existed because it was undisputed that NCE's debt remained unpaid and that defendant had personally guaranteed the debt. Defendant argued that a genuine issue of fact existed regarding whether he understood the guarantee or had agreed to be personally liable for NCE's debt. He did not contend that plaintiff had used deception or artifice to obtain his signature on the guarantee, but only stated that no one informed him that he could be held personally responsible for the corporate debt. However, the guarantee clearly provided that defendant agreed to pay the debt if the corporation failed to pay. The guarantee contained a heading, in capital letters, that read, "INDIVIDUAL GUARANTEE." The trial court granted plaintiff's motion, and entered judgment against defendant in the amount of $71,695.66.

* Circuit judge, sitting on the Court of Appeals by assignment.

We review the trial court's decision whether to grant the motion for summary disposition pursuant to MCR 2.116(C)(10) de novo to determine whether any genuine issue of material fact

exists that would prevent entering judgment for the moving party as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). In making this determination, we view the documentary evidence in a light favoring the nonmoving party. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). We conclude that the trial court did not err in granting plaintiff's motion for summary disposition.

Defendant argues that a genuine issue of fact existed regarding whether he was deceived into signing the guarantee. However, this argument was not presented to the trial court and thus is not preserved for appellate review. *Auto Club Ins Ass'n v Lozanis*, 215 Mich App 415, 421; 546 NW2d 648 (1996). On appeal, plaintiff claims that "[h]e was told that he could not become liable for the debt." This assertion is flatly contradicted by the record. Plaintiff himself only claimed that no one explained to him that he could be personally liable for the corporate debt. He did not claim that anyone expressly told him that he would avoid personal liability.

Defendant also argues that a genuine issue of fact existed regarding whether he knew that he could be held personally liable for the corporate debt by signing the guarantee. This argument is without merit. Absent a showing of mutual mistake or fraud, the failure to read a contract, or the misunderstanding of the terms of a contract, is not grounds for rescission. *Paterek v 6600 Limited*, 186 Mich App 445, 450; 465 NW2d 342 (1990).

Although defendant's factual claims on appeal are unsupported by the record, we decline plaintiff's invitation to impose sanctions on defendant pursuant to MCR 7.216(C) for bringing a vexatious appeal. Plaintiff has not demonstrated that defendant lacked a reasonable belief that a meritorious issue existed or that defendant's pleadings were "grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the court." MCR 7.216(C)(1)(a) and (b).

Affirmed. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Peter D. O'Connell
/s/ Patrick M. Meter
/s/ Timothy G. Hicks